IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

OCTOBER 1995 SESSION

STATE OF TENNESSEE,	*	C.C.A. # 01C01-9504-CC-00117
APPELLEE,	*	FRANKLIN COUNTY
VS.	*	Hon. Thomas W. Graham, Judge
EDDIE DEWAYNE SONS,	*	(Theft of Property)
APPELLANT.	*	

For the Appellant:

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For the Appellee:

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OPINION FILED:_____

AFFIRMED

Gary R. Wade, Judge

OPINION

The defendant, Eddie Dewayne Sons, was convicted for theft of property valued at more than $1000.00 but less than $10,000.00. A codefendant, Sheila Wiggs, was acquitted. The trial court imposed a Range I, three-year six-month sentence, but granted community corrections after the service of six months in jail.

The single issue on appeal is whether the evidence was sufficient to support the jury's verdict. We affirm the judgment of the trial court.

On June 3, 1993, Keith Henshaw, an investigator with the Franklin County Sheriff's Department, received a tip that the defendant and his codefendant were in possession of a stolen riding lawn mower. Officer Henshaw went to the residence the defendant shared with Ms. Wiggs and asked permission to search. The defendant consented. The lawn mower was found under a tarp in the driveway of the house.

Upon questioning, the defendant explained to Officer Henshaw that he had first seen the lawn mower on his patio when he had come home from the lake the night before. The defendant acknowledged his suspicions that the mower might have been stolen, but told the officer that he decided to push the mower out of the way and cover it with the tarp. When asked from where the mower had possibly been stolen, the defendant eventually said, "from Wal-Mart." Ms. Wiggs, a codefendant claimed that she had "told [the defendant they]

should call the law, but [they] didn't."

Officer Henshaw contacted the local Wal-Mart and learned that the mower had been sold to a person named Jeff Owens. At trial, Debra Wicklander, the assistant manager at the Wal-Mart, identified a photograph of the mower and testified that it had been put on lay-a-way by Owens. She stated that Owens had purchased a different mower in May, a short time before the theft, and that the mower found at the defendant's home, valued at $1,097.00, was still owned by Wal-Mart.

The defendant and Ms. Wiggs testified to essentially the same facts. Each stated that they had fully cooperated with the police. They both denied any involvement in the theft of the mower.

Defense witness Carolyn Kay Garner testified that she had gone to the lake with the defendants. She stated that there was no lawn mower on the patio when they left but that one was there when they returned.

Donna Jordan, an intern with the sheriff's department, testified for the state on rebuttal. She stated that she had asked Ms. Garner about a mower "for sale" on the day the department received the tip about the theft. She said Ms. Garner referred her to Ms. Wiggs who, after being contacted, denied any knowledge of the mower.

The defendant contends that the evidence was insufficient to support his convictions. He claims that the jury's finding of guilt is inconsistent with its finding of not guilty as to his codefendant.

On appeal, the state is entitled to the strongest legitimate view of the evidence and all inferences which might be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). The credibility of the witnesses, the weight to be given their testimony, and the reconciliation of conflicts in the proof are matters entrusted exclusively to the jury as triers of fact. Byrge v. State, 575 S.W.2d 292, 295 (Tenn. Crim. App. 1978). When the sufficiency of the evidence is challenged, the relevant question is whether, after reviewing the evidence in the light most favorable to the state, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Williams, 657 S.W.2d 405, 410 (Tenn. 1983), cert. denied, 465 U.S. 1073 (1984); Tenn. R. App. P. 13(e). A crime may be established by the use of circumstantial evidence only. State v. Tharpe, 726 S.W.2d 896, 899-900 (Tenn. 1987); Marable v. State, 203 Tenn. 440, 451-52, 313 S.W.2d 451, 457 (1958).

In order to support a conviction of theft, the state must prove that the defendant "knowingly obtain[ed] or exercise[d] control over ... property" with an "intent to deprive the owner of [the] property...." Tenn. Code Ann. § 39-14-103. The state presented proof that the defendant was in possession of recently stolen property. The defendant had

failed to contact the police or otherwise report the mower's "appearance" at his residence. That the jury chose to accredit the testimony of the prosecution witnesses and reject that of the defense witnesses is within their prerogative. A rational trier of fact could have found the essential elements of the crime of theft beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307 (1979).

Moreover, that the jury chose to acquit the codefendant under much the same evidence has no bearing upon this conviction. That is also the prerogative of the finder of fact. See State v. Bloodsaw, 746 S.W.2d 722, 726 (Tenn. Crim. App. 1987)(refusing to speculate as to the jury's reasoning in those cases when the verdicts appear to conflict).

Accordingly, the judgment of the trial court is affirmed.

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Gary R. Wade, Judge

CONCUR:

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David H. Welles, Judge

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Hewitt P. Tomlin, Jr., Special Judge